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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/943,238

08/31/2001

Shrjie Tzeng

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EXAMINER

MOORE JR, MICHAEL J

ART UNIT

PAPER NUMBER

2616

MAIL DATE

DELIVERY MODE

02/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/943,238	Applicant(s) TZENG, SHRJIE	
	Examiner Michael J. Moore, Jr.	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 1-10 and 16-23.
 Claim(s) objected to: _____.
 Claim(s) rejected: 11-15.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Michael J. Moore, Jr. **MM**
 Examiner
 AU 2616

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding claim 11, Applicant argues that the FAD buffers 414, 416, and 418 of Wong do not equate to the "first plurality of ports" of this claim. Applicant further argues that a port of a switch is an interface on a switch to which other devices can be connected while a buffer is a temporary storage area, and follows that one skilled in the art would not equate the FAD buffers of Wong with the first plurality of ports because they perform different functions.

While it is agreed that a buffer is a temporary storage area, it is held that a buffer can be broadly interpreted to be an interface on a switch to which other devices can be connected. As shown in Figure 4 of Wong, the buffers 0-8 of each of FAD devices 414, 416, and 418, are coupled to Tap Mux devices 426-438 and communicate (interface) with these devices. These FAD devices are within a switch fabric. Therefore, giving a broadest reasonable interpretation of the claim language, it is held that the FAD devices of Wong function as buffers as well as a "port" providing connection to other devices.

Regarding claim 11, Applicant also argues that there is no teaching or suggestion in Wong that the buffers 0-8 of fabric access devices (FAD) 414, 416, and 418 are configured to perform switching and rate control functions. Applicant further argues that simply because a buffer is part of a switch does not mean that the buffer is automatically configured to perform switching and rate control functions. However, these FAD buffers are a part of the switch fabric of Figure 4 and they are involved in the transmission and reception of data as well as congestion control information between SWIP controller 404 and port interface device (OCTOPID) groups 440, 442, 444, 446, 448, 450, and 452.

As Applicant noted, Wong discloses that each of the fabric access devices (FAD) 414, 416, and 418 includes a multiplexer 420, 422, 424 used to select a specific buffer that is to transmit or receive data. It is further stated on column 15, lines 18-34, how the SWIP controller receives buffer status information from the FAD buffers and determines which FAD buffers should have their contents transmitted. It is held that this constitutes a "switching function" as data is switched through a specific buffer.

Wong also discloses on column 16, lines 48-55, how the SWIP controller transmits a congestion rating to all port interface devices such that a determination can be made whether to transmit or discard data. As shown in Figure 4, SWIP controller communicates with port interface device (OCTOPID) groups via fabric access devices (FAD) 414, 416, 418 and TAP MUX devices 426-436. Therefore, it is held that the FAD buffers perform a "rate control function" of transmitting a congestion rating (regulates network congestion and packet dropping) from SWIP controller 404 to port interface device (OCTOPID) groups 440-452.

Therefore, it is held that Wong anticipates claim 11.

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